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IN THE HIGH COURT OF DELHI AT NEW DELHI

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***Reserved on: 13.12.2022
Pronounced on: 24.01.2023***

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W.P.(C) 5080/2004

NATIONAL COOP.UNION OF INDIA & ANR. Petitioners

Through: Mr. Manu Padalia, Advocate.

versus

ITS WORKMEN, REPRESENTED
BY DEL.LAB.UNION

..... Respondent

Through: Mr. Jawahar Raja and Mr.
Siddharth Sapra, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J

1. The case at hand is a Writ Petition preferred under Article 226/ 227 of The Constitution of India. Petitioner No.1/The National Cooperative Union of India & Petitioner No.2/The management of National Cooperative Printing Press in the present case are aggrieved by the Award dated 03.09.2001 as corrected on 31.07.2003 passed by the Industrial Tribunal No. III, Delhi in I.D. No. 274/87 titled as *The Management of M/s National Cooperative Printing Press, 4/2 Kirti Nagar Industrial Area, New Delhi and M/s National Cooperative Union of India, 3 Siri Institutional Area, Panchsheel Marg (behind*

Haus Khas), New Delhi-16 and Its Workmen as represented by Delhi General Udyog Karamchari Sangh (Regd.) G-119, Karampura, Najafgarh Road, New Delhi-15 (“impugned award”).

2. In the impugned award, learned Labour Court has held that the workmen were entitled to the same grades and pay scales and other facilities, i.e. HRA, CCA, DA, LTC, etc. which were given to their counterparts in Government Printing Press, w.e.f. 01.04.1982. Being aggrieved by the said decision, the Petitioners have prayed for issuance of a writ in the nature of Certiorari or any other appropriate writ thereby setting aside the impugned award.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

3. The case at hand centres around the dispute pertaining to disparity between the grades and pay scales awarded to the workmen of the management of Petitioner Nos. 1 and 2 and that of the employees of the Government Press.
4. Petitioner No.1 is a society registered under the Multi-State Cooperative Societies Act, 1984 (as amended in 2002) whereas Petitioner No.2 is a Factory registered under the Factories Act, 1948. Petitioner No.1 is running the Petitioner No.2 under the name & Style of National Cooperative Printing Press.
5. The appropriate Government vide its Order No. F.24(359)/82-Lah./5997, dated 1.4.1982 had sent up an industrial dispute existing between the Petitioners and its workmen as represented by Delhi General Udyog Karamchari Sangh (Regd.) for adjudication to the

Presiding Officer, Industrial Tribunal No. 1, with the following terms of reference:-

"Whether the workmen employed by the management in their Printing Press are entitled to same grades/Pay Scale and other facilities i.e. House Rent Allowance, CCA, DA and L.T.C. etc. as are given to their counterparts in Govt. Printing Press and if so, what directions are necessary in this respect?"

6. The Respondent Union submitted its statement of claim wherein the workmen employed with the Petitioner No.2 claimed to be working under the direct control of the management of the Petitioner No.1 and complained of step-brotherly treatment being meted out to them by the management of the Petitioner No.1 who was not paying heed to the demands of the workmen for allowing the pay scales, House Rent Allowance, city compensatory allowance, D.A., L.T.C., Leave and Holidays Benefits etc. according to the Service Rules of the Petitioner No.1, although the same was allowed to the clerical staff. Even the pay scale, H.R.A., CCA, DA, ETC, and other benefits, which were applicable to the workmen of Government Press were not allowed to the applicant workmen. As per Para No.14 of the Service Rules of the Petitioner No.1 stipulated that the workmen were entitled to the scales of pay, which were not less than the pay scales fixed by Government of India for their corresponding employees. Having made the afore-stated claims, the workmen prayed that the management be directed to pay the same grades of pay-scale, D.A., H.R.A., C.C.A., L.T.C., etc. as given to the counterparts in the Government Printing Press and to apply Service Rules of the Petitioner No.1, to the employees working under the Petitioner No.2.

7. The claims of the workmen were contested by the management in the Written Statement wherein the management submitted that in view of the settlement between the management of the Petitioner No.2 and its workmen, no dispute remained to be adjudicated upon. The management further submitted that the Petitioner No.2 was a separate entity and had no connection with the Petitioner No.1. It was further submitted on behalf of the management that the pay scales, administrative regulations and working conditions etc. prescribed by the Petitioner No.2 had been accepted by the workers without any reservation and there was thus no question of discrimination between the two sets of workmen as there was no privity of contract between the management of the Petitioner No.1 and the workmen of the Petitioner No.2.
8. The workmen filed a rejoinder controverting the contrary allegations of the Written Statement and reaffirming that of the statement of claim.
9. On the basis of pleading of the parties, the learned Labour Court framed the following issues on 15.03.1985:
- “1. What is the effect of settlement?
2. Whether there is no privity of contract between management of National Cooperative Union of India and the workmen concerned under reference?
3. As in term of reference.”*
10. The workmen examined Sh. Dharamvir as WW-1, Sh. Shobhan Singh as WW-2, Sh. Rajender Prasad as WW-3, Sh. Sube Singh as WW-4, Sh. Darab Singh as WW-5, Sh. Vichitar Singh as WW-6 and Sh. Swaroop Singh as WW-7 and closed the evidence on behalf of the

workmen. The management examined Sh. Prem Ballabh as MW-1 and closed the evidence on behalf of the management.

11. Upon perusing the material facts and evidence on record, the aforesaid issues were decided by the learned Labour Court against the Petitioners and in favour of the Respondent Union vide award dated 03.09.2001. The terms of the reference were answered in the affirmative by the learned Labour Court which held the Respondent workmen to be entitled to the same grades and pay scales and other facilities i.e. HRA, CCA, DA, LTC etc. which were given to their counterparts in the Government Printing Press and the management was directed to make available the same to the employees.
12. Consequent to the passing of the said award, an application for correction of the said award was filed on behalf of the Respondent Union qua the date of enforceability of the award. The said application was allowed by the learned Labour Court and pursuant thereto, a corrected award dated 31.07.2003 was passed wherein it was held that the claim of the workmen succeeded and the grades and pay scale and other facilities, i.e. HRA, CCA, DA, LTC, etc. which were given to their counterparts in the Government Printing Press with effect from 01.04.1982.
13. Aggrieved by the aforesaid award and the corrected version thereof, the Petitioner has challenged the same in the present Writ Petition and sought setting aside of the impugned award(s).

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Mr. Manu Padalia, learned counsel for the Petitioners, submitted that the Respondent Union had concealed the fact of existence of

settlement which regulated the pay of the workmen. It was further submitted on behalf of the Petitioner that once a settlement had been arrived at between the parties, there was no dispute left to be adjudicated and the learned Labour Court wrongly entered upon the reference and rendered an award. Learned counsel relied on *National Engineering Industries Ltd. v. State of Rajasthan & Ors.* reported as **2000 (1) LLJ 263** in support of his submissions.

15. It was further submitted by the learned counsel for the Petitioner that it was a settled position of law that a plea which had not been raised could not be looked into and even if evidence has been led, the said evidence could not be considered. The learned counsel furthered his argument by contending that the learned Labour Court could not have travelled beyond the terms of reference in the present case and render an award on the fairness of the settlement. Reliance was placed on *The Workmen of Hindustan Lever Ltd & Ors v. The Management of Hindustan Lever Ltd* reported as **1984 (1) LLJ 388 (401)** in support of his submissions.

16. Learned counsel for the Petitioner placed reliance on *State of Uttaranchal v. Jagpal Singh Tyagi* reported as **(2005) 8 SCC 49** and *Jaihind Roadways v. Maharashtra Rajya Mathadi Transport & General Kamgar Union & Ors.* reported as **(2005) 8 SCC 51** to submit that where the workmen allege force and coercion on behalf of the management, they must prove the same. Relying on the same judgment, learned counsel further submitted that the cross-examination of the workmen's witnesses reveals that in the present case, the benefit of the settlement dated 06.01.1981 was extended to

the Respondent. To conclude this limb of the argument, the learned counsel submitted that it was not open for the workmen to take the benefit under the settlement and later on resile from their earlier stand and file a statement of claim before the learned Labour Court.

17. It was further contended by the learned counsel on behalf of the Petitioner that the learned Labour Court had erred in reviewing its earlier order and the exercise of power by the learned Labour Court was in the teeth of Section 17A (4) and Section 18 of the I.D Act. Learned counsel for the Petitioner further submitted that once the award had been passed, the learned Labour Court became *functus officio* and had no power to review the same. To further his argument, the learned counsel submitted that once the award had been rendered, it became binding by virtue of Section 18 of the I.D. Act. Learned counsel concluded this limb of the argument by submitting that in view of Section 17A (4) of I.D. Act, the learned Labour Court had no power to review the award in order to supply a date of enforcement of the same as the award having no specific date of enforcement automatically became enforceable on the expiry of thirty days from the date of publication and there was no reason or power to modify the award when a way out was given in the statute itself.

18. The contention with respect to Section 28 of The Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as “**Central Rules**”) was refuted by the learned counsel for Petitioner who submitted that the said provision only referred to errors arising from any “accidental slip or omission” or from a clerical mistake, neither of which grounds were made out in the case at hand and the learned Labour Court had

exceeded its jurisdiction under Section 28 of the aforesaid Central Rules.

19. Learned counsel for the Petitioner further submitted that even if the settlement dated 06.01.1981 was ignored for the reason that the same was not sent to the Conciliation Officer, the Respondent workmen still failed to prove their case for claiming parity in pay with respect to the employees of the Government Printing Press. Learned counsel for the Petitioner placed reliance on *Khazan Singh v. DTC* reported as (2018) 246 DLT 391 on the subject-matter of parity in pay and submitted that the factors stated in paragraph 46 of the judgment were to be taken into consideration before invoking the doctrine of parity in pay and the onus of proof was on the workmen to establish that there was equality in work and the difference in pay scales of the two classes of workmen similarly situated was not based on any reasonable classification. Learned counsel furthered his contention by submitting that the onus placed on the workmen in the present case had not been discharged by them.
20. It was further submitted by the learned counsel for the Petitioner that both Petitioner Nos. 1 and 2 were different and separate legal entities and also performed different functions. To further his argument, it was submitted by the learned counsel that the by-laws/ Service Rules of Petitioner No. 1 did not apply to the Respondent/ Workmen of the Petitioner No. 2.
21. The learned counsel for the Petitioner further submitted that no evidence had been led by the Respondent to prove that Petitioner No.2 was receiving any funding from the government or was in direct

control of the State or Central Government. Learned counsel placed reliance on the judgment of this Court in *Kishan Chand & Ors. v. The Chief Executive National Co-operative Union of India, W.P. (C) No. 855/ 2014 decided on 24.09.2019* to submit that the National Cooperative Union of India was not a 'State' under Article 12 of The Constitution of India. Drawing force from this submission, learned counsel further argued that if Petitioner No.1 was not 'State' under Article 12 of The Constitution of India, the employees of Petitioner No. 2 could not claim parity with the employees of Petitioner No. 1 and in turn, the employees of Government Press.

22. With these submissions, learned Counsel for the Petitioner prayed for the setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. Mr. Jawahar Raja, learned counsel for the Respondent submitted that there was no perversity in the impugned award which requires the intervention of this Court. Learned counsel further submitted that the learned Labour Court had examined the situation of both the parties and had also carried out an in-depth examination of the evidence on record. Drawing strength from this submission, the learned counsel argued that there was no jurisdictional error or error apparent on the face of the record to invite a fresh appreciation of evidence by this Court.

24. It was further submitted by the learned counsel for the Respondent that the settlement had to be in accordance with the statutory provisions in order to be binding on the parties under Sections 18 (1) and 18 (3) of the I.D. Act. Learned counsel furthered his argument by

submitting that in order to be a binding settlement, the document had to be in Form-H as stipulated by Section 58 of the Central Rules and this requirement had not been fulfilled by the document presented as a settlement in the present case. Learned counsel relied on *Workmen of M/S Delhi Cloth and General Mills Ltd. v. The Management of M/S Delhi Cloth and General Mills Ltd.* reported as (1969) 3 SCC 302 to fortify his argument.

25. It was further submitted on behalf of the Respondent Union that in view of the statutory provisions and the rules made thereunder, a deeper probe ought to be made in the validity of the settlement and the same was not to be accepted casually. The learned counsel elaborately discussed the philosophy behind the I.D. Act and argued that the I.D. Act was enacted to ensure that the workmen were not treated in a high-handed manner by the management. Learned counsel furthered his submission by arguing that the I.D. Act stipulated a tripartite dispute resolution where the government got involved through its Conciliation Officer to ensure that the settlement entered into was just, fair and reasonable. Learned counsel concluded this limb of his argument by submitting that in the present case, the settlement had not been sent to the Conciliation Officer and therefore the Conciliation Officer could not get an opportunity to satisfy himself of the fact that the settlement arrived at between the parties was just, fair and proper.
26. Learned counsel for the Respondent placed reliance on *Workmen of M/S Delhi Cloth and General Mills Ltd. v. The Management of M/S Delhi Cloth and General Mills Ltd. (supra)* to elaborate upon the effect of non-compliance with statutory provisions in case of

settlement having been entered into between the management and the workmen. The learned counsel submitted that the settlement was to be arrived at with the assistance and concurrence of settlement officer and the same was to be governed by the statute and the relevant rules thereunder. The settlement had to be signed by both the parties thereto in such manner as prescribed and a copy thereof had to be sent to the appropriate government and the Conciliation Officer. There was no unfettered freedom with the management and the settlement had to be in accordance with the statutory provisions. It was further submitted by the learned counsel that if the reference was not proper and legal by reason of the settlement having been arrived at between the parties, it was incumbent upon the alleging party to show that the settlement was just and proper. It was further incumbent upon the learned Labour Court to satisfy itself that the settlement arrived at between the parties was just and proper. Learned counsel concluded his submission by arguing that the aforementioned requirements had not been satisfied by the Petitioner in the present case and the Petitioner had failed to discharge the onus placed on them.

27. The next submission made by the learned counsel for the Respondent was with respect to the effect of the non-compliance with the provisions of Central Rules. It was submitted by the learned counsel that the Rules had full force of law and judicial notice was to be taken of the same. Drawing strength from this submission, the learned counsel argued that in the event of non-compliance with Section 58 (4) of the said Rules in the present case where the settlement was not signed by both the parties and not sent to the Conciliation Officer, the

settlement must be held to be illegal and the case remanded back to the learned Labour Court in view of the judgment of the Hon'ble Supreme Court in *Workmen of M/S Delhi Cloth and General Mills Ltd. v. The Management of M/S Delhi Cloth and General Mills Ltd. (supra)*.

28. Learned counsel for the Respondent further placed reliance upon the judgment of this Court in *The Management, Co-operative Store Ltd. v. Shri Ved Prakash Bhambri* reported as (1986) SCC Online Del 257 to submit that the settlement entered into between the parties had to be in accordance with statutory rules and the definition of settlement given under section 2 (p) of the I.D. Act. Learned counsel furthered his submission by stating that the abovementioned requirements had not been met by the document in question in the present case as the settlement in question was merely in the form of a letter written by the workmen and had not even been signed by the management.
29. Placing reliance on *Tulsipur Sugar Company Ltd. v. State of U.P & Ors.* reported as (1969) 2 SCC 100, learned counsel for the Respondent further submitted that the non-supply of date of enforcement of the award was clearly an ambiguity to be removed and the exercise of power by the learned Labour Court was therefore proper in view of Rule 28 of Central Rules which specifically provided for the power of correction of the award.
30. It was further argued by the learned counsel that the demand for pay parity raised in the present case was a general demand on behalf of a class of workmen of the Petitioner Management and it was not open for a few workmen to settle the demand on behalf of all of them.

31. It was also emphatically argued by learned counsel for the Respondent that both the Petitioners, i.e. Petitioner No. 1 and Petitioner No.2, were the same entity as the tax returns were filed for one entity and the workmen were transferable across entities, the same having been confirmed by the management witness. Drawing strength from this submission, the learned counsel argued that the employees of the Press (Petitioner No.2), which had no legal standing, were, in fact, employees of NCUI (Petitioner No.1) and, therefore, the two sets of workmen employed by the management in both the entities could not be treated differently by the management merely on the ground that Petitioner No. 2 did not receive government grants.

32. With these submissions, Learned Counsel for the Respondent prayed for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

33. This Court has heard the Counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.

34. It is a settled position of law that the High Court in the exercise of Writ jurisdiction under Article 226 of the Constitution of India can interfere with the order of the learned Labour Court in a writ of certiorari if the order assailed suffers from an error of jurisdiction or from breach of principles of natural justice or is vitiated by an apparent error of law which results in manifest injustice. The case law is clear on the point that where two views are possible, the Court cannot interfere with the plausible view taken by the learned Labour Court supported by reasoning. An award cannot be set aside on mere

re-appreciation of the evidence led by the parties. The court could not substitute its own opinion in place of the finding of the learned Labour Court. The learned Labour Court is entitled to take a plausible view which may or may not be the only reasonable view of the matter.

35. This court shall now proceed to examine the impugned award in the light of the position of law discussed above.

36. The primary question that arises is whether the findings returned and the relief granted by the learned Labour Court are legally sustainable. The submissions made by the parties necessitate a careful perusal of the award on the following two grounds:

- i. Privity of contract between the Petitioner No.1 and the Workmen Union
- ii. Existence of a valid settlement and effect thereof
- iii. Power of learned Labour Court to correct the award and supply a date of enforcement

i. Privity of contract between Petitioner No.1 and Workmen Union

37. Before proceeding with the discussion on the validity of the impugned award, it will be pertinent to take up the sub-issue pertaining to privity of contract between the Petitioner No.1 and the workmen Union.

38. The learned Labour Court has returned the following findings on the issue of effect of settlement and privity of contract between the Petitioner No.1 and workmen of the Petitioner No.2

“Sh. Prem Ballabh, MWI tendered his affidavit Ex. MW 1/A, in his evidence, where he deposed that he is working as Manager in the National Co-operative Printing Press. The pay-scales, administrative regulations, working conditions prescribed by National Co-operative Printing Press were accepted by the workers without any reservation. The demands made by the

*employees were unjustified. However, a settlement was arrived at between the employees of National Co-operative Printing Press and its workmen vide settlement dated 6.8.1982, and after settlement they withdrew the demands. The copy of the same is Ex. MW1/1. The workers of National Cooperative Printing Press are given the pay scales and emoluments accordingly as per the IV & Vth Pay Commissions. The statements to this effect are annexed as Annexure MW1/2- MW1/3. The employees of National Co-operative Printing Press were given option for fixation of their pay scales. Copy of the same collectively marked as Annexure-MW 1/4. After withdrawal of the demands, as per this settlement dated 6.10.81 vide Ex. MW1/1 no fresh demand was raised and further Sh Sandal, one of the employees of Management No. 1 having withdrawn his claim, his statement was recorded by the predecessor of this court. In the cross-examination on behalf of the workmen, he stated that the balance-sheet Ex. MW1/W1 belongs to them and Ex MW1/W2 also belongs to them. He admitted that all the payments for management are received by them in the name of management No.2. The documents Ex MW1/W3 is also issued by them. **They have been issuing a consolidated balance-sheet for the workmen even to the period prior thereto Sh PC Sandal, was their Proof Reader in Printing Press. He is now working with management No.2 as Asstt. Director. He admitted that Sh. S.K. Bisht, Desk Top Printing (Computer Operator) with Management No.1 is now working as P.A. to Press Director to Shri K.A. Prasad. Sh K.A. Prasad was appointed by the management No.2. He also admitted that various staff members of management No.1 & 2 have been inter-changing and transferred from one another and vice versa. However, he denied that the work of management No. 1 was procured by management No.2, alone. They have given higher scales vide documents Ex. MW 1/1 not only to the persons mentioned and signing the same, but to all other workers. They are paying the benefits of IV and V Pay Commission Reports to their employees. He is deposing as a witness for management No. 1 & 2 both.***

9. However, from the testimony of MW1 Sh. Prem Ballabh, it is established that there is no difference between the management No. 1 and 2, because the employee of management No. 1 and 2 are inter transferable as admitted by MW-1. Therefore, it cannot be accepted that management No.2 has no concern with management No. 1. Therefore, it is clearly made out that the management No. 1 is not a different entity,

but it is only a unit of management No.2. Therefore, the employees of management No. 1 cannot be discriminated regarding their pay allowances and all other benefits from the employees working with Management No.2. It is also evident from the facts proved that management No. 1 is operating within the premises of management No.2.

11. ISSUE NO.2: In view of the findings to the Issue No. 1, it is not acceptable that there is no privity of contract between the management of National Cooperative Union of India and the workmen, because the management No. 1 is a unit run by management No.2. Therefore, this objection taken by the management is not tenable. Same is rejected. This issue is answered against the management and in favour of workmen.”

(emphasis supplied)

A perusal of the above paragraphs reveals that the learned Labour Court painstakingly combed through the evidence on record including the examination of the witnesses and noted that the management of Petitioner Nos. 1 and 2 was the same. It is pertinent to note that the employees of the two Petitioners were transferable between the two entities and this fact had also been stated by the Management Witness Shri Prem Ballabh in his cross-examination before the learned Labour Court. At the risk of straying into the domain of appreciation of evidence, this Court also notes that the letter which the Petitioners claim to be a settlement has also been written by the Technical workers of Petitioner No.2 to the Chief Executive of Petitioner No.1. Moreover, the learned counsel for the Petitioners has not been successful in pointing out any perversity in the said finding of the learned Labour Court. In view of this discussion, this Court is of the considered opinion that the issue of Petitioner Nos. 1 and 2 being one and the same entity and there

being a privity of contract between the management of NCUI and the workmen has been rightly decided by the learned Labour Court. There is no perversity in the aforesaid finding.

ii. Existence of a valid settlement and effect thereof

39. It will be pertinent to note here that the lynchpin of the attack mounted by the Petitioner on the impugned award has been the existence of the settlement dated **06.10.1981** which has allegedly been ignored by the learned Labour Court while arriving at its decision. Vide the aforesaid settlement, which is in the form of a letter written by the workmen to the Chief Executive of NCUI, the workmen have requested that the joint demand notice dated 24.1.1981 given to the management through Delhi General Udyog Karamchari Sangh may be treated as withdrawn and have also agreed to not raise any further demands for a period of at least five years.
40. On the other hand, the learned counsel for the Respondent has challenged the validity of the aforesaid settlement on the ground that the same was not in compliance with the statutory provisions and the Conciliation Officer had not had an opportunity to satisfy himself as to the justness and fairness of the aforesaid settlement.
41. A settlement has been defined under Section 2 (p) of the I.D. Act in the following terms:

“settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by] the appropriate Government and the conciliation officer;”

(emphasis supplied)

42. It becomes amply clear from a perusal of the above provision that in order to be a valid and binding settlement under the I.D. Act, a settlement had to be signed by the parties thereto in the prescribed manner and a copy thereof had to be sent to the authorized officer and the conciliation officer.

43. At this juncture, it becomes relevant to refer to Rule 58 of the Central Rules made under Section 38 of the Industrial Disputes Act, 1947 (“I.D. Act”). This rule reads as under:

“58. Memorandum of settlement: (1) A settlement arrived at in the course of conciliation proceedings or otherwise shall be in form 'H'.

(2) The settlement shall be signed-

(a) in the case of an employee, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of workmen, by any officer of a trade union of workmen or by five representatives of workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

Explanation-In this rule "officer" means any of the following officers, namely-

(a) the President;

(b) the Vice-President;

(c) the Secretary (including the General Secretary);

(d) a Joint Secretary;

(e) any other officer of the trade union authorised in this behalf by the President and Secretary of the Union.

(3) Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner, New Delhi, and to the Conciliation Officer (Central) concerned."

44. It will also be apposite to reproduce Form 'H' at this juncture.

"FORM FOR MEMORANDUM OF SETTLEMENT

Name of parties Representing employer (s) Representing workmen :

Short recital of the case

Terms of settlement

Witnesses:

Signature of the parties

(1)

(2)

*Signature of Conciliation Officer,
Board of Conciliation*

Copy to:

(1) Conciliation Officer (Central) (here enter the office address of the Conciliation Officer in the local area concerned).

(2) Regional Labour Commissioner (Central)...

(3) Chief Labour Commissioner (Central) New Delhi

(4) The Secretary to the Government of India, Ministry of Labour, New Delhi."

45. It will also be pertinent at this juncture to refer to the observations of the Hon'ble Supreme Court in the celebrated judgment of ***Workmen of M/S Delhi Cloth and General Mills Ltd. v. The Management of M/S Delhi Cloth and General Mills Ltd.*** reported as ***(1969) 3 SCC 302***, wherein the Hon'ble Court has made the following observations on the importance of the settlement meeting the requirements laid down under the statutory provisions:

"13. The respondent's learned Advocate in reply obliquely suggested in this connection that the Management and the Union were free to arrive at a settlement of their dispute and if they agreed to do so then the agreement could not but be held to be binding. We do not think the Management and the Union can, when a dispute is referred to the Conciliation Officer,

claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances, is in our opinion, governed by the statute and the rules made thereunder. Reliance was next placed on S. 18(1) to support the binding character of the settlement. This sub-section for its proper construction must be read with the other sub-sections and the relevant rules, in the light of the definition of 'settlement' as contained in S. 2(p) of the Industrial Disputes Act. 'Settlement' as defined therein means settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer. In the light of these provisions we do not think that s. 18(1) vests in the Management and the Union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement has to be in compliance with the statutory provisions.

14. It was then contended by Shri Daphtary that non-compliance with R. 58 (4) having not been pleaded by the appellant before the Tribunal, no question of proof by the respondent of compliance therewith arose. This plea, it was strongly objected, should not be allowed to be raised at this late stage in this Court.

15. We are not impressed by this submission. On reference having been made by the Government to the Tribunal, if the respondent wanted to show that this reference was invalid because of a lawful settlement, then it was incumbent on the party relying on such a settlement to prove that it was lawful and valid, rendering the reference illegal. This was particularly so when we find that Shibban Lal had in his affidavit expressly asserted that the settlement relied upon had not been filed before the Conciliation Officer prior to June 18, 1965 when he sent his failure report and also that the two persons entering into the settlement had no authority either from the Union or from the members thereof to enter into a binding agreement. Section 38 of the Industrial Disputes Act empowers

the appropriate Government to make rules for the purpose of giving effect to the provisions of the Act. Rules made by the Central Government have to be laid before each House of Parliament while in session for a period of 30 days and the Houses of Parliament are given an opportunity of not only modifying them but even of deciding that the rules should not be made at all. These rules thus appear to us to have full force of law of which judicial notice has to be taken. It was therefore incumbent on the Tribunal to satisfy itself that the settlement relied upon by the respondent in support of the plea of illegality of the reference, which vitally affected its jurisdiction, was in accordance with the provisions of both Industrial Disputes Act and the relevant statutory rules. This was all the more so in view of the pleas contained in Shibban Lal's affidavit produced before the Tribunal to which reference has already been made in this judgment. Though no reference was specifically made to r.58, the facts affirmed were reasonably clear to attract the attention of the Tribunal to the question of legality of the settlement. Bearing in mind the object of the Industrial Disputes Act and the important public purpose which it is designed to serve, the Tribunal, in our view, had an obligation to make a deeper probe into the validity of the settlement and not to accept it casually.

16. However, on the respondent's argument that R.58 had not been specifically relied upon by the appellant before the Tribunal we felt inclined and indeed suggested to the respondent during the course of arguments that the case might be submitted to the Tribunal for the purpose of deciding the question of compliance with the said rule, particularly with sub-rule (4). But the respondent's learned Advocate with his usual fairness, frankly pointed out that remand for this purpose would not be of much use because this sub-rule had not been complied with in terms. A faint suggestion thrown at once stage that it had been substantially complied with was not seriously pressed though our attention was drawn in that connection to a letter written by the Management on July 16, 1965 to the Secretary, Ministry of Labour, Government of India, enclosing a copy of the settlement arrived at by the Management and the Union in connection with the matters stated therein. The settlement was said to contain the following

- 1. Age of retirement*
- 2. Case of Shri Shibban Lal*
- 3. Case of Shri Mansuka*

4. Case of 7 Kahars
5. Case of reduction in pay of 12 workmen
6. Case of Shri Jagan Nath
7. Case of Shri Chiranjilal Pahalwan.

This letter quite clearly does not amount to compliance with the rule. Keeping in view its object and purpose, this rule does seem to demand full compliance in order to clothe the settlement with a binding character on all workmen.”

(emphasis supplied)

46. The afore-cited judgment lays down in categorical terms that in order to be binding, the purported settlement must be in compliance with the statutory provisions. Upon a reference being made with respect to a matter which has been covered under a settlement, it is incumbent upon the party relying on the settlement to prove that the settlement was lawful and valid. The settlement must be able to withstand a deeper probe into its validity by the learned Labour Court.
47. The Petitioner in the present case has not been able to satisfy this Court of the validity of the aforesaid settlement. It will be pertinent to note that the alleged settlement is in the form of a letter dated **06.10.1981** written by the Technical Workers of NCPP, i.e. Petitioner No.2 to the Chief Executive of NCUI, i.e . Petitioner No. 1, wherein the workmen have requested that the joint demand notice dated 24.1.1981 given to the management through Delhi General Udyog Karamchari Sangh may be treated as withdrawn and have also agreed to not raise any further demands for a period of at least five years. A bare perusal of this letter reveals that it is not as per Form ‘H’ of the said Rules. Furthermore, it only consists of the signatures of the workmen and has not been signed on behalf of the management, which

is an essential requirement as per 'Form-H' as mandated by Section 58 of the Central Rules.

48. As noted in the above paragraphs, Section 2 (p) of the I.D. Act lays down that a settlement arrived otherwise in course of conciliation proceeding becomes valid and binding on being signed by the parties thereto in the prescribed manner and a copy thereof being sent to the authorized officer and the conciliation officer. Section 58(4) of the Central Rules mandates that a copy of the settlement arrived at otherwise in the course of conciliation proceedings is to be sent to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner, New Delhi, and to the Conciliation Officer (Central) concerned. The rationale of including the government functionaries in the process of arriving at the settlement flows from the fact that the resolution of industrial disputes under the I.D. Act is a tripartite process to preserve industrial peace, wherein the government involves itself in the process for ensuring that there is no arm-twisting of the workmen by the management on account of their weaker bargaining position. The above-stated observation is in line with the objectives behind the I.D. Act as noted by the Hon'ble Supreme Court in the judgment of ***Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*** reported as ***AIR 1958 SC 353*** in the following terms:

“11. Thus, an examination of the salient provisions of the Act shows that the principal objects of the Act are-

(1) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;

(2) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of representation by a registered trade union or federation of trade unions or association of employers or a federation of associations of employers;

(3) prevention of illegal strikes and lock-outs;

(4) relief to workmen in the matter of lay-off and retrenchment; and

(5) collective bargaining....”

49. It can safely be concluded from the afore-discussed observations that a settlement has to be just and fair in order to be binding on the parties and the same can be ensured through the involvement of the governmental machinery by sending the settlement arrived at otherwise in the course of settlement proceedings to the appropriate authorities and the conciliation officer. This Court finds itself in agreement with the learned counsel for the Respondent on this point. In the case at hand, it is pertinent to note that the abovementioned settlement was not in the form as prescribed under ‘Form-H’. It was not signed on behalf of the management and had also not been sent to the Conciliation Officer as conceded by the learned counsel for the Petitioner in the course of the submissions. The same is in teeth of the observations made by the Hon’ble Supreme Court in the judgment of ***Workmen of M/S Delhi Cloth and General Mills Ltd. v. The Management of M/S Delhi Cloth and General Mills Ltd. (supra)***.

50. A similar view has also been endorsed by this Court in the judgment of ***The Management, Co-operative Store Ltd. v. Shri Ved Prakash Bhambri*** reported as ***1986 SCC Online Del 257***. The relevant portion of the judgment is being reproduced below:

*“9. The settlement in question, copy of which is annexure 'P3' to this writ, shows that a cheque for Rs.9,849/33P has been received by the employee in full and final settlement of his claim including all retrenchment benefits and it also records that workman withdrew the dispute raised by him regarding termination of his services and he undertook to send a copy of this to the presiding Officer, Additional Industrial Tribunal, Tis Hazari and to the Labour Commissioner and that after the receipt of the said amount he had been left with no claim against the Super Bazar on any account One Mr. M. L Malik, Chief Cashier of the Super Bazar, made an endorsement that Ved Prakash Bhambri had received the said cheque in his presence. The settlement is admittedly not signed by any authorised person on behalf of the Management. It is also witnessed by any two witnesses So, strictly speaking the settlement is not in accordance with Form 'H' or in accordance with the definition of 'settlement' given in Section 2(p) The very definition of 'settlement' requires that the same must be in writing to be signed by both the parties. The requirement of Rule 58 (4) also is not met because the same made it incumbent that both the parties jointly should send copies of the settlement to the appropriate authorities. It may be that the authorities mentioned in that Rule are not concerned authorities as far as the present employee was concerned, still the authorities i.e. Presiding officer. Industrial Tribunal and the Conciliation Officer and the Labour Commissioner should have been forwarded the copies of the settlement jointly by the Workman and the Management which admittedly has not been done. In the rejoinder the petitioner had taken up the plea that it was the Workman who had taken up the responsibility of sending the copies of the settlement to the said concerned authorities and if the Workman had not complied with the undertaking the Management should not be allowed to suffer on that score The question which arises for consideration is whether the said Rule 58 and Form 'H' have to be strictly followed before a settlement could be considered valid. Section 2(p) clearly contemplates a settlement to be executed in accordance with the Rule and the Form prescribed. So, Rule 58 and the Form 'H' are statutory provisions which have to be given full effect before a settlement could be considered valid. Counsel for the Workman has cited **Workmen of M/s. Delhi Cloth & General Mills Ltd. v. The Management of M/s. Delhi Cloth & General Mills Ltd..** The Supreme Court while noticing the provisions of Section 18(1) and the definition of 'settlement' as given in Section 2(p) clearly held that the plain reading of the Rule and the Form*

shows that the settlement has to be in compliance of the statutory provisions. In the cited case, it appears that the settlement was arrived at during the course of conciliation proceedings but as settlement was not entered into with the concurrence of conciliation Officer and also as provisions of Rule 58 (4) were not complied with, the settlement was held to be invalid. It is true in the present case the settlement was not arrived at during the pendency of the conciliation proceedings, yet the settlement has to be in accordance with the statutory provisions before it can be held to be valid. It has been observed in this very judgment that the provisions of Rule 58 demand full compliance in order to cloth the settlement with a binding character.

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11. Counsel for the petitioner has vehemently argued that after all even though the Management had not got signed the settlement from any of his authorised persons and even though the copies of the settlement have not been sent to the parties concerned even then the Workman cannot challenge the settlement who, if it is proved had entered into this settlement voluntarily. I do not appreciate this contention because Section 2(p) clearly contemplates a settlement which is to be in writing signed by both the parties and the settlement has to be in accordance with the prescribed Rule and form. The present settlement does not meet with this requirement at all.

12. Counsel for the petitioner then has argued that the settlements and the compromises should be encouraged and should be upheld in order to bring about harmonious relationship between the workman and the managements and they should not be held invalid on technical grounds. When the law requires a particular thing to be done in a particular manner, then in order that particular act could be considered valid the same must be shown to have been performed in accordance with the procedure prescribed. 'Settlement' has been clearly defined in the statute and so, the settlement has to be in accordance with the statutory provisions. The Supreme Court has held that in order a particular settlement could be valid the same must be in strict compliance with the prescribed rules. In the present case unfortunately the settlement does not meet with the requirements of the statutory rules. Hence, the Tribunal was right in holding that the settlement is not void and was not enforceable in law.

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14. It is true that a settlement voluntarily and willingly arrived at between the workman and the management must be given effect to and it should not be brushed aside on any hyper-technical ground, but in order to see whether a settlement is valid or not the pro-requisite has to be satisfied that it is a settlement as contemplated by the statute and the rules framed there under. The present settlement being not strictly in accordance with the statutory rules and also does not come under the definition of 'settlement' given in Section 2(p), so the same could not be considered binding on the parties under Section 18(1) of the Act. I have no reason to differ with the reasoning given by the Tribunal on this aspect.”
(emphasis supplied)

51. In the opinion of this Court, the point of law in the case at hand is squarely covered by the aforecited observations in *Workmen of M/S Delhi Cloth and General Mills Ltd. v. The Management of M/S Delhi Cloth and General Mills Ltd. (supra)* and *The Management, Co-operative Store Ltd. v. Shri Ved Prakash Bhambri (supra)*.
52. At this juncture, it will also be pertinent to take up the contention of the Petitioner about the observation of the learned Labour Court on the nature of the settlement as being outside the scope of the pleadings. A perusal of the records of the case and the impugned award reveals that one of the issues framed in the course of proceedings before the learned Labour Court had been the effect of the settlement in question and the answer to the said issue as well as the terms of reference was not possible without examining the nature of the settlement entered between the parties. The afore-stated contention of the learned counsel for the Petitioner, therefore, holds no water.
53. In light of the above discussion, this Court is of the considered opinion that the document alleged to be a 'settlement' by the Petitioner was not in compliance with the statutory provisions governing the

same. Non-compliance of the statutory provisions to ensure the just and fair nature of the settlement militates against the spirit of collective bargaining as embodied by the I.D. Act. The settlement in question was not just and proper and therefore was non-existent in the eyes of law. Learned Labour Court therefore had a power to entertain an industrial dispute on the terms of reference.

iii. Power of learned Tribunal to correct the award and supply a date of enforcement

54. Another ground of challenge mounted by the Petitioner to the validity of the award is that two awards were rendered from the same reference. It is pertinent to note that consequent to the passing of the impugned award dated 03.09.2001, an application for correction of the said award was filed on behalf of the Respondent Union qua the date of enforceability of the award. The said application was allowed by the learned Labour Court and pursuant thereto, a corrected award dated 31.07.2003 was passed wherein it was held that the claim of the workmen succeeded and the grades and pay scale and other facilities, i.e. HRA, CCA, DA, LTC, etc. which were given to their counterparts in the Government Printing Press with effect from 01.04.1982. The heading of the award dated 31.07.2003 reads as **“Corrected award”**.

55. Learned counsel for the Petitioner has argued that once an award had been rendered by the learned Labour Court, the learned Labour Court had become *functus officio* and had no power to modify the award in absence of any slip of hand, omission or a clerical mistake. On the other hand, the learned counsel for the Respondent relied on Rule 28 of the Central Rules and argued that the non-supply of date of

enforcement of the award was clearly an ambiguity to be removed and the exercise of power by the learned Labour Court was therefore proper.

56. The relevant portion of the order dated 31.07.2003 passed by the learned Labour Court providing for correction of the award is being reproduced as below:

“This order shall dispose of the application moved on behalf of workman for correction of clerical error occurred due to omission or slip or typographical mistake as specific effective date has not been mentioned in the award dated 3.9.2001 since when the workman would be entitled to the relief awarded. The application has been assisted on behalf of management who filed reply. It is submitted no clerical error has occurred. This tribunal has become functus officio. I have heard the submission on behalf of the parties and perused the record. It is revealed that there is no mention of effective date in the order of reference or in the prayer to statement of claim, filed on behalf of workman. Therefore, the prima facie error or omission nor slip is not made out. However, to remove the ambiguity it is clarified that relief is awarded to workmen i.e. 1.4.1982, the date of reference. The application accordingly is disposed of and the corrected award be prepared and the appropriate Government be informed by sending the copy of corrected award immediately.”

(emphasis supplied)

57. It will be apposite at this juncture to refer to the observations of the Hon’ble Supreme Court in ***Tulsipur Sugar Company Ltd. v. State of U.P & Ors. (supra)***. The relevant portion of the judgment is being reproduced below:

“8. The correctional jurisdiction conferred on the adjudicating authority under Section 6(6) is in terms identical with the one conferred under Section 152 of the CPC and rule 28 of the Industrial Disputes (Central) Rules 1957 and is in consonance with the first and foremost principle that no party should suffer any detriment on account of a mistake or an error committed by an adjudicating authority.

*9. ... The High Court felt that if there is no such time limit an award, even after it has become enforceable and in some cases even implemented, would be rendered unsettled. But as already stated, the power is a limited one which can be exercised only in cases where a mistake, clerical or arithmetical or an error arising from an accidental slip or omission has occurred. The award thus would have to be corrected only within this circumscribed field. **It may be that the correction of an award might to a certain extent have an unsettling effect to what has already become settled, but the correction is made not due to any fault of the parties but of the adjudicating authority whose accidental slip or omission cannot be allowed to prejudice the interests of the parties.** We do not visualise any substantial hardship resulting from the exercise of this power which the High Court thought might arise if an award is allowed to be amended even after it has become enforceable or even if it has been enforced. A similar difficulty can also be imagined when a civil court exercises a similar power under Section 152 of the CPC. But no one has so far suggested that because of that difficulty a limitation must be inferred in that section. A similar difficulty would also arise under Rule 28 of the Industrial Disputes (Central) Rules, 1957. But so far no one has read a similar limitation in the correctional power provided by that rule."*

(emphasis supplied)

58. The aforementioned observations are instructive in the present case in view of the fact that the non-supply of date of enforcement in the award and making the same enforceable after a period of 30 days from the date of its publication would have been prejudicial to the interests of the workmen who would have been deprived of the benefit of wages in an increased pay-scale for a span of 19 years, i.e. from the date of reference in 1982 till the date of rendering of the award in 2001.

59. In view of the above discussion, this Court is of the considered opinion that the learned Labour Court had the power to correct the

award to supply an omission or remove an ambiguity that would have been prejudicial to the interest of either of the parties. A perusal of the impugned order reveals that the said jurisdiction was properly exercised by the learned Labour Court in the present case.

CONCLUSION

60. In view of the settled legal position, it cannot be disputed that re-appreciation of the findings of facts arrived at by the learned Labour Court is not permissible in judicial review in exercise of powers under Article 226 of the Constitution. Taking into consideration the observations made in the above paragraphs and the prevailing position of law with respect to jurisdiction of the Writ Court, this Court is of the considered opinion that it is clear that the learned Labour Court has rendered the award after properly perusing and appreciating the evidence on record. The view taken by the learned Labour Court with respect to the pay scale applicable to the workmen in question is a plausible view arrived at after taking into consideration the relevant material on record. There was sufficient material constituting basis for the findings recorded and the findings seem to be unexceptionable based on relevant and sufficient material duly considered in the *intra vires* exercise of power.
61. In the light of the discussion herein above, this Court is of the considered opinion that the impugned Award does not suffer from any infirmity or a manifest error apparent on the face of the proceedings so as to warrant interference in the exercise of writ jurisdiction.

62. Accordingly, the present Writ Petition is dismissed. There shall be no order as to costs.

GAURANG KANTH, J.

JANUARY 24, 2023
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